

From: Bentley, Berkeley <Berkeley.Bentley@wv.gov>
Sent: 5/16/2019 5:16:50 PM
To: Eric Nelson
Subject: FW: HB 2828 Replacement Bill

Attachments: [image001.png](#), [DRAFT May 14 HB2828 creating new 11-21-12k and 11-24-6b_\(002\).docx](#)

Delegate Nelson,

As we discussed, please find below a summary of Allen's analysis he provided to me:

HB 2828 was passed by the 2019 Legislature as a combination of two House bills (*i.e.*, HBs 2828 and 2887). HB 2887 died in the House Finance Committee. The Senate Finance Committee amended the original HB 2828 by adding *The West Virginia New Market Jobs Act*, which in essence is HB 2887. The amended HB 2828 passed the Senate and the House on the last day of the session.

The attached Replacement Bill for HB 2828 does not contain *The West Virginia New Market Jobs Act* (*i.e.*, the provisions of HB 2887) for the following reasons:

1. The deleted language from HB 2887 assigns the initial responsibility for processing applications for WV insurance premium tax credits to the WV Economic Development Authority (WVEDA), which would receive a \$10,000 application fee to accept and review each application, and to certify qualified applications to the Tax Department, which would provide notice of each certified application. The review of applications should be assigned to the West Virginia Development Authority, which, unlike the WVEDA, is directly involved in generating economic development projects. This would be a simple fix, and, in fact, the Development Authority has agreed to process the tax credit applications.
2. Once a qualified community development entity is notified that its project has been certified, the Insurance Commissioner (OIC) is charged with the following responsibilities regarding administration of the insurance premium tax credit program (but would receive nothing of the \$10,000 application fee):
 - a. Provide tax credit guidance and determinations (*i.e.*, letter rulings) to community development entities and the insurance companies that have invested in certified projects;
 - b. Monitor the State and Federal tax returns of the investor insurance companies; and
 - c. Recapture awarded State insurance premium tax credits, when appropriate, based on the review of an insurance company's Federal tax returns. These State and Federal returns would need to be monitored annually, and any recapture of State insurance premium tax credits must be in proportionate to the corresponding Federal tax credits recapture.
3. OIC does not have expertise or the resources to fulfill its responsibilities under *The West Virginia New Market Jobs Act*. OIC does not currently have access to the State or Federal tax returns of insurance companies. It simply collects State premium taxes based on insurance companies' annual financial statements. These premium taxes are then transferred monthly from the Insurance Tax Fund to the General Revenue Fund. In this regard, the premium tax credit is capped at a total of \$60 million with no phase-in schedule. Unused credits can be carried forward indefinitely.
4. In order to carry out its duties under HB 2828 as passed (and vetoed), OIC will have to establish a new unit, complete with additional staff that will require training, confidentiality qualification to access State and Federal tax returns, appropriate computer software, and possibly new computer hardware. In this regard, it should be noted that OIC has downsized its workforce by nearly 99 FTEs since 2016.
5. The bill refers to and urges OIC to utilize § 45D and other provisions of the Internal Revenue Code and corresponding regulations, as amended. This language may constitute an impermissible delegation of State authority to the Federal government.

Please feel free to call or email to discuss any issues or with any questions.

Thanks,

Berkeley



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